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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

9/023/0015
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September 30, 2009

CERTIFIED RETURN RECEIPT

7005 2570 0000 4801 6782

Robert Steele
1055 North 400 East
Nephi, Utah 84648

Subject: Proposed Assessment for State Cessation Order No. CO-2009-42-01, Robert Steele, Gardner Canyon Mine, S/023/0015, Juab County, Utah

Response Due By: 30 Days of Receipt

Dear Mr. Steele:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced Cessation Order. The Cessation Order was issued by Division Inspector, Wayne Western, on September 1, 2009. Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$2,200.00. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'Fact of the Violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an Informal Conference within thirty 30 days of receipt of this letter. If you wish to review the proposed penalty assessment, you should file a written request for an Informal Assessment Conference within thirty (30) days of receipt of this letter



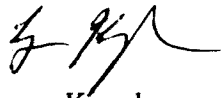
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The informal conferences will be conducted by a Division-appointed Conference Officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty.

If you are also requesting both a review of the fact of violation, and the proposed penalty, the assessment conference will be scheduled immediately following the review of the fact of the violation.

If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty - 30) days of the date of this proposed assessment (by October 30, 2009). Please remit payment to the Division, mail c/o Vicki Bailey.

Sincerely,



Lynn Kunzler
Assessment Officer

LK:vs

Enclosure: Proposed assessment worksheet

cc: Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

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A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
Conducting operations without appropriate approvals, Environmental harm, and Reduced establishment of a diverse and effective vegetation cover.
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

****** While operator has failed to provide an appropriate reclamation surety(event occurred), it is considered unlikely that environmental harm or reduced establishment of a diverse and effective vegetation cover will occur so long as the operator properly reclaims this site. Points were therefore assigned at the mid-point for the range of 'probability of occurrence'.***

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 7

PROVIDE AN EXPLANATION OF POINTS:

****** No damage has occurred, and it is considered somewhat unlikely that damage will occur. Points are therefore assigned at the midpoint of the lower half of the range.***

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 17

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater Degree of Fault

ASSIGN NEGLIGENCE POINTS 23

PROVIDE AN EXPLANATION OF POINTS:

*** The operator was cited in the past for this same issue (MC-07-04-01). This cessation order was vacated, but the information on which the vacation order was based appears to be incorrect. The Division subsequently issued two Orders, dated April 28, 2008 and August 5, 2009 to which the operator did not respond. These orders required the same information required in the two cessation orders. Therefore, a greater degree of fault than Negligence is warranted. Points were assigned at mid-point of the 'Greater Degree of Fault' range.

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

***** The CO has yet to be abated. Therefore Good Faith points cannot be considered at this time.**

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-2009-42-01</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>17</u>
III. TOTAL NEGLIGENCE POINTS	<u>23</u>
IV. TOTAL GOOD FAITH POINTS	<u>0</u>
TOTAL ASSESSED POINTS	<u>40</u>
 TOTAL ASSESSED FINE	 <u>\$ 2,200.00</u>